

RECALCULATING FRANCHISE FEE OWED BY FORT SUMTER TOURS, INC.

The Senate proceeded to consider the bill (S. 2331) to direct the Secretary of the Interior to recalculate the franchise fee owed by Fort Sumter Tours, Inc., a concessioner providing service to Fort Sumter National Monument, SC, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and insert the part printed in italic.

SECTION 1. ARBITRATION REQUIREMENT.

The Secretary of the Interior (in this Act referred to as the "Secretary") shall, upon the request of Fort Sumter Tours, Inc. (in this Act referred to as the "Concessioner"), agree to binding arbitration to determine the franchise fee payable under the contract executed on June 13, 1986, by the Concessioner and the National Park Service, under which the Concessioner provides passenger boat service to Fort Sumter National Monument in Charleston Harbor, South Carolina (in this Act referred to as "the Contract").

SEC. 2. APPOINTMENT OF THE ARBITRATOR.

(a) **MUTUAL AGREEMENT.**—Not later than 90 days after the date of enactment of this Act, The Secretary and the Concessioner shall jointly select a single arbitrator to conduct the arbitration under this Act.

(b) **FAILURE TO AGREE.**—If the Secretary and the concessioner are unable to agree on the selection of a single arbitrator within 90 days after the date of enactment of this Act, within 30 days thereafter the Secretary and the Concessioner shall each select an arbitrator, the two arbitrators selected by the Secretary and the Concessioner shall jointly select a third arbitrator, and the three arbitrators shall jointly conduct the arbitration.

(c) **QUALIFICATIONS.**—Any arbitrator selected under either subsection (a) or subsection (b) shall be a neutral who meets the criteria of section 573 of title 5, United States Code.

(d) **PAYMENT OF EXPENSES.**—The Secretary and the Concessioner shall share equally the expenses of the arbitration.

(e) **DEFINITION.**—As used in this Act, the term "arbitrator" includes either a single arbitrator selected under subsection (a) or a three-member panel of arbitrators selected under (b).

SEC. 3. SCOPE OF THE ARBITRATION.

(a) **SOLE ISSUE TO BE DECIDED.**—The arbitrator shall determine—

(1) the appropriate amount of the franchise fee under the Contract for the period from June 13, 1991, through December 31, 2000, in accordance with the terms of the Contract; and

(2) any interest or penalties on the amount owed under paragraph (1).

(b) **DE NOVO DECISION.**—The arbitrator shall not be bound by any prior determination of the appropriate amount of the fee by the Secretary.

(c) **BASIS FOR DECISION.**—The arbitrator shall determine the appropriate amount of the fee based upon the law in effect on the effective date of the Contract and the terms of section 9 of the Contract.

SEC. 4. EFFECT OF DECISION.

(a) **RETROACTIVE EFFECT.**—The amount of the fee determined by the arbitrator under section 3(a) shall be retroactive to June 13, 1991.

(b) **NO FURTHER REVIEW.**—Notwithstanding subchapter IV of title 5, United States Code (commonly known as the Administrative Dispute Resolution Act), the decision of the arbitrator shall be final and conclusive upon the Secretary and the Concessioner and shall not be subject to judicial review.

SEC. 5. GENERAL AUTHORITY.

Except to the extent inconsistent with this Act, the arbitration under this Act shall be conducted in accordance with subchapter IV of title 5, United States Code.

SEC. 6. ENFORCEMENT.

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under this Act, or by any unreasonable delay in the appointment of the arbitrator or the conduct of the arbitration, may petition the United States District Court for the District of South Carolina or the United States District Court for the District of Columbia for an order directing that the arbitration proceed in the manner provided by this Act.

Amend the title to read: "A bill to require the Secretary of the Interior to submit the dispute over the franchise fee owed by Fort Sumter Tours, Inc. to binding arbitration."

The amendment (No. 4296) was agreed to, as follows:

AMENDMENT NO. 4296

Strike all and insert the following:

"SECTION 1. ARBITRATION REQUIREMENT.

"The Secretary of the Interior (in this Act referred to as the 'Secretary') shall, upon the request of Fort Sumter Tours, Inc. (in this Act referred to as the 'Concessioner'), agree to binding arbitration to determine the franchise fee payable under the contract executed on June 13, 1986 by the Concessioner and the National Park Service, under which the Concessioner provides passenger boat service to Fort Sumter National Monument in Charleston Harbor, South Carolina (in this Act referred to as 'the Contract').

"SEC. 2. APPOINTMENT OF THE ARBITRATOR.

"(a) **MUTUAL AGREEMENT.**—Not later than 30 days after the date of enactment of this Act, the Secretary and the Concessioner shall jointly select a single arbitrator to conduct the arbitration under this Act.

"(b) **FAILURE TO AGREE.**—If the Secretary and the Concessioner are unable to agree on the selection of a single arbitrator within 30 days after the date of enactment of this Act, within 30 days thereafter the Secretary and the Concessioner shall each select an arbitrator, the two arbitrators selected by the Secretary and the Concessioner shall jointly select a third arbitrator, and the three arbitrators shall jointly conduct the arbitration.

"(c) **QUALIFICATIONS.**—Any arbitrator selected under either subsection (a) or subsection (b) shall be a neutral who meets the criteria of section 573 of title 5, United States Code.

"(d) **PAYMENT OF EXPENSES.**—The Secretary and the Concessioner shall share equally the expenses of the arbitration.

"(e) **DEFINITION.**—As used in this Act, the term 'arbitrator' includes either a single arbitrator selected under subsection (a) or a three-member panel of arbitrators selected under subsection (b).

"SEC. 3. SCOPE OF THE ARBITRATION.

"(a) **SOLE ISSUES TO BE DECIDED.**—The arbitrator shall, after affording the parties an opportunity to be heard in accordance with section 579 of title 5, United States Code, determine—

"(1) the appropriate amount of the franchise fee under the Contract for the period from June 13, 1991 through December 31, 2000 in accordance with the terms of the Contract; and

"(2) any interest or penalties on the amount owed under paragraph (1).

"(b) **DE NOVO DECISION.**—The arbitrator shall not be bound by an prior determination

of the appropriate amount of the fee by the Secretary or any prior court review thereof.

"(c) **BASIS FOR DECISION.**—The arbitrator shall determine the appropriate amount of the fee based upon law in effect on the effective date of the contract and the terms of the Contract.

"SEC. 4. FINAL DECISION.

"The arbitrator shall issue a final decision not later than 300 days after the date of enactment of this Act.

"SEC. 5. EFFECT OF DECISION.

"(a) **RETROACTIVE EFFECT.**—The amount of the fee determined by the arbitrator under section 3(a) shall be retroactive to June 13, 1991.

"(b) **NO FURTHER REVIEW.**—Notwithstanding subchapter IV of title 5, United States Code (commonly known as the Administrative Dispute Resolution Act), the decision of the arbitrator shall be final and conclusive upon the Secretary and the Concessioner and shall not be subject to judicial review.

"SEC. 6. GENERAL AUTHORITY.

"Except to the extent inconsistent with this Act, the arbitration under this Act shall be conducted in accordance with subchapter IV of title 5, United States Code."

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2331), as amended, was read the third time and passed, as follows:

S. 2331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. ARBITRATION REQUIREMENT.

The Secretary of the Interior (in this Act referred to as the "Secretary") shall, upon the request of Fort Sumter Tours, Inc. (in this Act referred to as the "Concessioner"), agree to binding arbitration to determine the franchise fee payable under the contract executed on June 13, 1986 by the Concessioner and the National Park Service, under which the Concessioner provides passenger boat service to Fort Sumter National Monument in Charleston Harbor, South Carolina (in this Act referred to as "the Contract").

SEC. 2. APPOINTMENT OF THE ARBITRATOR.

(a) **MUTUAL AGREEMENT.**—Not later than 30 days after the date of enactment of this Act, the Secretary and the Concessioner shall jointly select a single arbitrator to conduct the arbitration under this Act.

(b) **FAILURE TO AGREE.**—If the Secretary and the Concessioner are unable to agree on the selection of a single arbitrator within 30 days after the date of enactment of this Act, within 30 days thereafter the Secretary and the Concessioner shall each select an arbitrator, the two arbitrators selected by the Secretary and the Concessioner shall jointly select a third arbitrator, and the three arbitrators shall jointly conduct the arbitration.

(c) **QUALIFICATIONS.**—Any arbitrator selected under either subsection (a) or subsection (b) shall be a neutral who meets the criteria of section 573 of title 5, United States Code.

(d) **PAYMENT OF EXPENSES.**—The Secretary and the Concessioner shall share equally the expenses of the arbitration.

(e) **DEFINITION.**—As used in this Act, the term "arbitrator" includes either a single arbitrator selected under subsection (a) or a three-member panel of arbitrators selected under subsection (b).

SEC. 3. SCOPE OF THE ARBITRATION.

(a) **SOLE ISSUES TO BE DECIDED.**—The arbitrator shall, after affording the parties an

opportunity to be heard in accordance with section 579 of title 5, United States Code, determine—

(1) the appropriate amount of the franchise fee under the Contract for the period from June 13, 1991 through December 31, 2000 in accordance with the terms of the Contract; and

(2) any interest or penalties on the amount owed under paragraph (1).

(b) **DE NOVO DECISION.**—The arbitrator shall not be bound by any prior determination of the appropriate amount of the fee by the Secretary or any prior court review thereof.

(c) **BASIS FOR DECISION.**—The arbitrator shall determine the appropriate amount of the fee based upon the law in effect on the effective date of the Contract and the terms of the Contract.

SEC. 4. FINAL DECISION.

The arbitrator shall issue a final decision not later than 300 days after the date of enactment of this Act.

SEC. 5. EFFECT OF DECISION.

(a) **RETROACTIVE EFFECT.**—The amount of the fee determined by the arbitrator under section 3(a) shall be retroactive to June 13, 1991.

(b) **NO FURTHER REVIEW.**—Notwithstanding subchapter IV of title 5, United States Code (commonly known as the Administrative Dispute Resolution Act), the decision of the arbitrator shall be final and conclusive upon the Secretary and the Concessioner and shall not be subject to judicial review.

SEC. 6. GENERAL AUTHORITY.

Except to the extent inconsistent with this Act, the arbitration under this Act shall be conducted in accordance with subchapter IV of title 5, United States Code.

The title was amended so as to read: "A bill to require the Secretary of the Interior to submit the dispute over the franchise fee owed by Fort Sumter Tours, Inc. to binding arbitration."

MAKING TECHNICAL CORRECTIONS TO ENERGY POLICY ACT OF 1992

DAYTON AVIATION HERITAGE PRESERVATION AMENDMENTS ACT OF 2000

Mr. MACK. Mr. President, I ask unanimous consent that the Senate proceed, en bloc, to the immediate consideration of the following items which are at the desk: H.R. 2641 and H.R. 5036.

The PRESIDING OFFICER. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (H.R. 2641) to make technical corrections to title X of the Energy Policy Act of 1992.

A bill (H.R. 5036) to amend the Dayton Aviation Heritage Preservation Act of 1992 to clarify the areas included in the Dayton Aviation Heritage National Historical Park and to authorize appropriations for that park.

There being no objection, the Senate proceeded to consider the bills.

Mr. MACK. Mr. President, I ask unanimous consent that the bills be read the third time, passed, and the motions to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bills (H.R. 2641 and H.R. 5036) were read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—S. 1236 AND S. 1849

Mr. MACK. Mr. President, I ask unanimous consent that it be in order for the Chair to lay before the Senate, en bloc, messages from the House on S. 1236 and S. 1849, that the Senate concur, en bloc, to the House amendment, and that the action be reconsidered and tabled.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARROWROCK DAM HYDROELECTRIC PROJECT

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1236) entitled "An Act to extend the deadline under the Federal Power Act for commencement of the construction of the Arrowrock Dam Hydroelectric Project in the State of Idaho", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

(a) **IN GENERAL.**—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 4656, the Commission may, at the request of the licensee for the project and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for three consecutive 2-year periods.

(b) **EFFECTIVE DATE.**—Subsection (a) shall take effect on the date of the expiration of the extension issued by the Commission prior to the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).

(c) **REINSTATEMENT OF EXPIRED LICENSE.**—If the period required for commencement of construction of the project described in subsection (a) has expired prior to the date of the enactment of this Act, the Commission shall reinstate the license effective as of the date of its expiration and the first extension authorized under subsection (a) shall take effect on the date of such expiration.

The Senate concurred in the amendment of the House.

WHITE CLAY CREEK WILD AND SCENIC RIVERS SYSTEM ACT

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1849) entitled "An Act to designate segments and tributaries of White Clay Creek, Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "White Clay Creek Wild and Scenic Rivers System Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) Public Law 102-215 (105 Stat. 1664) directed the Secretary of the Interior, in cooperation and consultation with appropriate State and local governments and affected landowners, to conduct a study of the eligibility and suitability of White Clay Creek, Delaware and Pennsylvania, and the tributaries of the creek for inclusion in the National Wild and Scenic Rivers System;

(2) as a part of the study described in paragraph (1), the White Clay Creek Wild and Scenic Study Task Force and the National Park Service prepared a watershed management plan for the study area entitled "White Clay Creek and Its Tributaries Watershed Management Plan", dated May 1998, that establishes goals and actions to ensure the long-term protection of the outstanding values of, and compatible management of land and water resources associated with, the watershed; and

(3) after completion of the study described in paragraph (1), Chester County, Pennsylvania, New Castle County, Delaware, Newark, Delaware, and 12 Pennsylvania municipalities located within the watershed boundaries passed resolutions that—

(A) expressed support for the White Clay Creek Watershed Management Plan;

(B) expressed agreement to take action to implement the goals of the Plan; and

(C) endorsed the designation of the White Clay Creek and the tributaries of the creek for inclusion in the National Wild and Scenic Rivers System.

SEC. 3. DESIGNATION OF WHITE CLAY CREEK.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

"(162) WHITE CLAY CREEK, DELAWARE AND PENNSYLVANIA.—The 190 miles of river segments of White Clay Creek (including tributaries of White Clay Creek and all second order tributaries of the designated segments) in the States of Delaware and Pennsylvania, as depicted on the recommended designation and classification maps (dated June 2000), to be administered by the Secretary of the Interior, as follows:

"(A) 30.8 miles of the east branch, including Trout Run, beginning at the headwaters within West Marlborough township downstream to a point that is 500 feet north of the Borough of Avondale wastewater treatment facility, as a recreational river.

"(B) 15.0 miles of the east branch beginning at the southern boundary line of the Borough of Avondale to a point where the East Branch enters New Garden Township at the Franklin Township boundary line, including Walnut Run and Broad Run outside the boundaries of the White Clay Creek Preserve, as a recreational river.

"(C) 4.0 miles of the east branch that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania, beginning at the northern boundary line of London Britain township and downstream to the confluence of the middle and east branches, as a scenic river.

"(D) 6.8 miles of the middle branch, beginning at the headwaters within Londonderry township downstream to a point that is 500 feet north of the Borough of West Grove wastewater treatment facility, as a recreational river.

"(E) 14 miles of the middle branch, beginning at a point that is 500 feet south of the Borough of West Grove wastewater treatment facility downstream to the boundary of the White Clay Creek Preserve in London Britain township, as a recreational river.